STATE OF NEW YORK

8455

2019-2020 Regular Sessions

IN ASSEMBLY

July 8, 2019

Introduced by M. of A. MOSLEY -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to automatic sealing of certain misdemeanor records

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is amended by adding a new section 160.57 to read as follows:

§ 160.57 Automatic sealing of certain misdemeanor records.

1. As used in this section, "eligible offense" shall mean any misdemeanor crime defined in the laws of this state other than a sex offense defined in article one hundred thirty of the penal law, or an offense for which registration as a sex offender is required pursuant to article six-C of the correction law. For the purposes of this section, where an individual is convicted of more than one eligible offense committed as part of the same criminal transaction as defined in subdivision two of section 40.10 of this chapter, such offenses shall be considered one eligible offense.

2. Where an individual has been convicted in New York state of no more than two eligible offenses and ten years have passed since the imposition of the sentence on an individual's latest criminal conviction in New York state, all official records and papers relating to the arrests, prosecutions, and convictions of such offenses, including all duplicates and copies thereof on file with the division of criminal justice services or any court, shall be sealed and not made available to any person or public or private agency except as provided in subdivision four of this section; provided, however, the division shall retain any fingerprints, palmprints and photographs, or digital images of the same. The commissioner of the division of criminal justice services shall immediately notify the office of court administration, the clerk of such court where the individual was convicted, and the heads of all

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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appropriate police departments and other law enforcement agencies regarding the records that shall be sealed pursuant to this section. In calculating the ten year period under this subdivision, any period of time during which the person was incarcerated shall be excluded and such ten year period shall be extended by a period equal to the time served under such incarceration.

3. Sealing of records pursuant to subdivision two of this section shall not apply to the records of any individual where such individual:

(a) is required to register as a sex offender pursuant to article six-C of the correction law;

(b) has previously obtained sealing of the maximum number of convictions allowable under section 160.58 of this article;

(c) has previously obtained sealing of the maximum number of convictions allowable under subdivision two of this section;

(d) has an undisposed arrest or charge pending in New York state;

(e) was convicted of any crime in New York state after the date of the entry of judgment of the last conviction for which sealing is sought;

(f) has been convicted of any crime in New York state that is not an eligible offense; or

(g) has been convicted of more than two crimes in New York state.

4. Notwithstanding any other provisions of this section, an individual's records that have been sealed pursuant to this section shall be made available to:

(a) such individual or such individual's designated agent;

(b) qualified agencies, as defined in subdivision nine of section eight hundred thirty-five of the executive law, and federal and state law enforcement agencies, when acting within the scope of their law enforcement duties;

(c) any state or local officer or agency responsible for the issuance of licenses to possess guns, when such individual has made an application for such a license;

(d) any prospective employer of a police officer or peace officer, as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to such individual's application for employment as a police officer or peace officer; provided, however, that every such applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and shall be afforded an opportunity to make an explanation thereto; and

(e) the criminal justice information services division of the federal bureau of investigation, for the purposes of responding to queries to the national instant criminal background check system regarding attempts to purchase or otherwise take possession of firearms, as defined in 18 USC 921 (a) (3).

5. In situations where sealing of an individual's records is required under subdivision two of this section, but has not taken place, and such individual or such individual's attorney presents to the office of court administration fingerprint records from the division of criminal justice services or a court disposition indicating that the period for eligibility has been satisfied for an eligible conviction, within thirty days of notice to the office of court administration, such individual's records shall be sealed as set forth in subdivision two of this section.

6. No person shall be required or permitted to waive eligibility for sealing pursuant to this section as part of a plea of guilty, sentence, or any agreement related to a conviction for an eligible offense and any such waiver shall be deemed void and wholly unenforceable.

§ 2. Section 837 of the executive law is amended by adding a new subdivision 22 to read as follows:

22. Annually publish on the division's website statistics regarding the total number of convictions automatically sealed pursuant to section 160.57 of the criminal procedure law.

§ 3. This act shall take effect immediately.